

Commissioner for Patents

REMARKS

Claims 1-6 and 8-14 remain in the application

Claims 1 and 8 are herein amended.

Claim 7 is herein canceled.

Claims 15-27 remain withdrawn from prosecution.

On page 2 of the Office action, the Examiner rejects claim 1 inter alia under 35 U.S.C. 102(b) as being anticipated by Callaway.

Callaway discloses a flexion gap distraction device that allows an accurate sizing of the flexion gap for the optimal positioning of an implant. The device is of mechanical nature, and is fitted between femur and tibia to hold these bones in place, with a view to performing a femoral cut.

In similar fashion to medical devices of this mechanical nature, a sequence of positioning steps must be performed with precision, for the Callaway device to hold the bones in suitable position. Once done, the cut may be performed.

Hence, Callaway relies solely on mechanical instruments for the accurate sizing. Therefore, the Callaway device has limitations in that the operator must carefully ensure that the relative position between tibia and femur is maintained once the device is set. Moreover, both the tibia and the femur must be cut prior to initiating the step of sizing. The Examiner is referred to column 6, lines 13-15, in which this is clearly stated. Hence, the fact that the femoral cut is already made may limit the choice of implants that may be used subsequently to the cut.

As clearly claimed in claim 1 of the present application, the femoral cuts are performed once all measurements have been made. This is possible due to the fact that the method of claim 1 relies on virtual data for the femoral implant, in calculating the femoral cut thicknesses.

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Moreover, the use of a reference coordinate system allows the user to move more freely, as the bones are tracked. Accordingly, there is no need to hold the bones in a specific structural relation, which is contrary to what Callaway teaches.

Accordingly, claim 1 has limitations that are clearly absent from Callaway, whereby the objection under 35 U.S.C. 102(b) is traversed.

In view of the above amendments and remarks, this application is considered to be in condition for allowance, and early notice to that effect is earnestly solicited.

Respectfully submitted,

Alain Richard

By:

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(Date)

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